FILED
JUL 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1941

314-65

AMANTA S. MAIER,
Petitioner,

vs.

THE CONTINENTAL OIL COMPANY,
Respondent.

No. 326

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable, the Supreme Court of the United States:

Amanta S. Maier, respectfully petitioning, shows the Court:

I.

Summary Statement of Matters Involved.

A. Nature of the action and decrees below.

This is a suit commenced by petitioner against respondent to annul and cancel and expunge from the public records a purported oil and gas lease on the ground that the same was void. Respondent filed a counterclaim asking a declaratory judgment that the lease was valid.

Trial was had by the court without the intervention of a jury. The court made findings of facts (R. 111 to 168) and stated its conclusions of law thereon to the effect that the law was with the petitioner and the lease was void (R. 168).

Judgment was entered for petitioner. (R. 169, 170.)

Respondent appealed to the Circuit Court of Appeals for the Seventh Circuit (R. 179). The cause was reversed and the lease held to be valid. The opinion of Judge Kerner (R. 199-206) concurred in by Judge Major by separate opinion (R. 206-208) held (1) the lease was not void for lack of description (R. 203-204); (2) the lease was not void for insufficient land identification (R. 204-205); (3) the lease was not invalidated by the act of respondent's assignor in changing the land descriptions after he had assigned the purported lease to respondent and after execution by petitioner and prior to recording. (R. 206.)

Judge Briggle dissented on the ground that the majority opinion did not follow the applicable Indiana law

and held: "I am of the opinion that the District Court properly applied the Indiana law." (R. 208.)

Petitioner filed her petition for a rehearing within the time allowed (R. 208, 209) which was denied by the Circuit Court of Appeals without opinion (R. 217).

II.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Acts of February 13, 1925, C-229 (43 Stat. 938); June 7, 1934, C-426 (48 Stat. 926, 28 U. S. C. 347).

The opinion of the Circuit Court of Appeals was filed and a decree entered on February 21, 1941 (R. 208), petitioner's petition for a rehearing was filed within the time allowed by the rules of said court, to-wit: on March 7, 1941 (R. 209) and was denied by the court without opinion on May 17, 1941 (R. 217).

This petition for certiorari was filed before the expiration of three months from May 17, 1941.

III.

STATEMENT OF FACTS.

Amanta S. Maier, petitioner, after the death of her husband, in January, 1937 (R. 96), became the owner of a substantial block of farm land in Gibson and Posey Counties, Indiana (R. 40, Finding No. 1, R. 111).

Late in May or early in June, 1937, one J. H. McClurkin (now deceased), respondent's assignor, met

petitioner and told her he had formerly been a geologist and was interested in that section of the country as oil territory and was looking for acreage (R. 40). McClurkin called on Mrs. Maier almost every day. She saw him ten or eleven times (R. 40). On one of the occasions McClurkin brought with him two lease forms which he filled out. On July 12, 1937 (R. 41) Mrs. Maier signed one copy of the lease form and retained it. (R. 40.) The lease form was partly printed, partly written, and partly blank. It contained no land descriptions; the portion of the form reserved therefor was left blank (R. 40, PX 1, R. 41-44, offered R. 41; Finding No. 2 R. 111-117).

Mrs. Maier was paid $1.00 as the total and sole consideration for the purported lease devoid of land descriptions, which after unauthorized material alterations McClurkin and his assignee, the respondent, sought to enforce against more than 2500 acres of land. (R. 22, 25, 27, 201.)

About two weeks subsequent to July 12, 1937, McClurkin delivered to Mrs. Maier a typewritten memorandum (R. 44, PX 2, R. 45, offered R. 45; Finding No. 3, R. 117-121) saying "Here is a copy of the descriptions that I have left with your lease at Griffin. You take this copy and put it onto your lease."[1] (R. 44, Finding No. 3, R. 117-121, 121.)

On July 27, 1937, Mrs. Maier, pursuant to McClurkin's request (R. 44, Finding No. 4, R. 121), went before a notary and signed and acknowledged a partly

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[1] Under Indiana law many of the descriptions on PX 2 are insufficient identifications of land to demise it as we show in the brief at page 24.

printed, partly written and partly blank form of oil and gas lease. (R. 45, 46, Finding No. 5, R. 121-127). There was attached to the back of the form either by a pin or clip a typewritten sheet of land descriptions similar to the typewritten sheet (PX 2, R. 45, offered R. 45) left with Mrs. Maier by McClurkin earlier in July (R. 46).

The lease form signed by Mrs. Maier on July 12, 1937, and retained by her contained no reference to the typewritten sheet of land descriptions (PX 2, R. 45, offered R. 45) delivered to her by McClurkin about two weeks subsequent to July 12, 1937. (R. 44.) The land descriptions (PX 2) contained no reference to the lease form (R. 45, PX 2, R. 45, offered R. 45, Finding No. 7, R. 127).

The lease form signed and acknowledged by Mrs. Maier before the notary on July 27, 1937, contained no reference to the sheet of typewritten descriptions pinned or clipped to the back of the lease form nor did the descriptions contain any reference to the lease form (R. 46, Finding No. 8, R. 127-128).

After Mrs. Maier had signed and acknowledged the lease form with land descriptions pinned or clipped to the back thereof, on July 27, 1937, she handed it back to the notary (R. 46) and did not see it again (R. 47).

On July 18, 1937, McClurkin wrote a letter to respondent offering it the land he purported to have under lease (DX 1, R. 66, offered R. 65).

On August 24, 1937, McClurkin and wife granted to respondent the right to conduct certain geophysical and geological surveys upon the land on which McClurkin purported to have a lease and which included

some of petitioner's lands (PX 16, R. 107-110, 108, offered R. 107, Finding No. 16, R. 139, 143, 140). After McClurkin entered into the contract with respondent on the 24th of August, 1937, he prepared and pasted in the blank spaces on the face of the oil and gas lease form signed by petitioner on the 27th day of July, 1937, a typewritten sheet containing the exact words and figures as contained on a similar sheet enclosed in a letter from McClurkin to Mrs. Maier (PX 4-B, R. 48, offered R. 48), dated September 28, 1937 (R. 46, Finding No. 12, R. 131-138, Finding No. 14, R. 144), received by her on September 30, 1937 (R. 53) hereafter referred to.

The typewritten sheet of land descriptions pasted on the front of the lease form which was recorded by McClurkin after assignment to respondent, was not the same as the typewritten sheet of land descriptions pinned or clipped to the lease form signed by petitioner on July 27, 1937. PX 2 (R. 45, offered R. 45) is the list of land descriptions given petitioner by McClurkin. At that time McClurkin said: "Here is a copy of the descriptions that I have left with your lease at Griffin . . ." (R. 44.)

The land descriptions pasted to the face of PX 3 (R. 46, offered R. 46) are not the same as those contained on PX 2 (R. 45).

A chart showing the land descriptions as originally prepared and as later altered is attached to the brief as Appendix A.

The pasting was done without the knowledge or consent of petitioner, nor was it thereafter submitted to petitioner for her signature and acknowledgment nor

did she receive any consideration therefor (Finding No. 19, R. 149).

On September 25, 1937, McClurkin and wife assigned the pretended Maier lease to respondent in accordance with their agreement (PX 16, R. 107-110, 108, offered R. 107) of August 24, 1937, to do so (R. 50-51, PX 6 R. 50, offered R. 50, Finding No. 15 R. 145-147).

On September 29, 1937, the pretended lease was recorded with the Recorder of Gibson County, Indiana (R. 53, Finding No. 12, R. 131-138).

Petitioner received on September 30th a letter under date of September 28, 1937, above referred to, which McClurkin wrote her, saying that "corrections were made in descriptions in lease you executed to *us* so as to *eliminate* mention of Forest reservations, and *we* ask that you kindly attach the enclosed corrected description on your copy of the lease, as the enclosed description is the one that will go on record . . ." (Emphasis supplied) (R. 48, PX 4-A, R. 48, offered R. 48, Findings No. 9 and No. 10, R. 128-129).

The description enclosed in the September 28th letter (PX 4-B R. 48, offered R. 48) was identical with the list pasted on the front of PX 3 (R. 46) except that in the sixth line the description which read "Pt. of Sec. 11 T 3 SR 14 W (fraction) containing 82.32" had three horizontal lines drawn through the first figure "1" in the number "11," and in the left margin there was written "should be pt. S 1." (R. 48.)

After the pretended lease was recorded, McClurkin demanded that the Gibson County recorder return it to

him "in order that he might make some corrections on it." (R. 61, Finding No. 16, R. 148.)

The record in the Recorder's office in respect of the description was altered after the pretended lease was recorded. (R. 60, Findings No. 17 and 18, R. 148.)

On October 27, 1937, McClurkin came to petitioner's home and left two leases with land description pasted on the face. Neither was ever signed by petitioner. (R. 48, 49, PX 5-A, 5 B, R. 49-50, offered R. 49, Finding No. 20, R. 149.) At that time petitioner informed McClurkin that he had no lease on her lands, to which McClurkin replied that it didn't matter whether he did or not. (R. 49, 60, Finding No. 21, R. 163.)

Within a few days after October 27, petitioner met McClurkin at a hotel, when she again told him he had no lease, which McClurkin admitted. (R. 53, 54, Finding No. 22, R. 163.)

In June, 1938, respondent voluntarily deposited in a bank in Indiana to petitioner's credit the sum of $256.90 as deferred rental under the purported lease, of which deposit petitioner did not know (R. 96) and of which she received no notice (R. 96, Findings No. 23 and 24, R. 163). Petitioner carried an account of from five to eight thousand dollars to operate her farm (R. 95, 105, Finding No. 25, R. 164). Deposits of approximately the same amounts were made in the account, sometimes two or three times a month (R. 96). Upon learning of the deposit, petitioner instructed the bank to return the sum to respondent (R. 101, 102, PX 19, R. 102, offered R. 102, 103, Finding No. 26, R. 164) which it did. (R. 103, PX 20, R. 103, offered R. 103). Respon-

dent returned the bank draft (R. 104, PX 21-A and 21-B, R. 103, offered R. 103).

Petitioner tendered and returned to McClurkin the one dollar, the consideration paid her for the pretended lease (R. 97, Finding No. 30, R. 167).

In December, 1938, E. J. Bergundthal, a lease buyer for respondent, called on petitioner (R. 54, 85) bringing seven leases with him for petitioner's Gibson County land (R. 54, 99, PX 8-A, 8-B, 9-A, 9-B, 10-A, 10-B, 11-A, 11-B, 12-A, 12-B, 13-A, 13-B, 14-A and 14-B, R. 55, 56, offered R. 55, Finding No. 28, R. 165). On petitioner's instructions the leases were taken to her attorney (R. 87). Petitioner refused to sign and execute these leases to respondent (R. 88, 89).

On December 27, 1938, after the commencement of this action on December 21, 1938, respondent recorded the assignment from McClurkin of the purported lease. (R. 52, Finding No. 31, R. 168).

The Circuit Court of Appeals said:

> "As a result of *appellant's operations* a discovery well was brought in in the Gibson County oil field (not on appellee's land) December 14, 1938, and seven days later, on December 21, 1938, she filed the present suit." (R. 201.)

It is not the fact that as a result of appellant's operations a discovery well was brought in. Such was not found by the trial court, and such was not contended by any party during the entire course of this litigation.

IV.

THE QUESTIONS PRESENTED.

Upon the record and the opinion of the Circuit Court of Appeals there is presented the following important question:

1. Whether the Circuit Court of Appeals wholly disregarded the applicable Indiana law (dissenting opinion R. 208) and thus violated the rule established by this Court in *Erie Railroad* vs. *Tompkins*, 304 U. S. 64, 82 L. ed. 1188, *Stoner* vs. *New York Life Insurance Co.*, 85 L. ed. (Adv.) 275, *Wichita Royalty Company et al.* vs. *City National Bank*, 306 U. S. 103 and *Equitable Life Insurance Co. of Iowa* vs. *Halsey, Stuart & Company*, 85 L. ed. (Adv.) 631, in deciding as follows:

(a) That the partly printed, partly written and partly blank lease form signed by petitioner, containing no description of the land purportedly leased, is valid and binding (R. 203-204).

(b) That the typewritten sheet of land descriptions pinned or clipped to the signed lease form which is not referred to in the lease form or which typewritten sheet makes no reference to the lease form, constitutes a valid and binding lease.

(c) That land descriptions such as "Pt of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres"; "Pt of W ½ of NW ¼ Sec. 4 T 3 SR 13 W containing 1.00 acres"; "Pt. fr. Sec. 6 T 3 SR 13 W

containing 62.99 acres," are insufficient identifications of land to demise it. (R. 204-205.)

(d) That the altering in a material respect of the land descriptions without petitioner's knowledge or consent did not invalidate the purported lease so as to bar respondent from affirmative relief. (R. 206.)

V.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The Circuit Court of Appeals for the Seventh Circuit has decided an important question of local law in conflict with the applicable decisions of the appellate courts of Indiana in disregard of the rule established by this court in *Erie Railroad Co.* vs. *Tompkins*, 304 U. S. 64, and subsequent cases announcing the same rule, in that it refused to follow the Indiana decisions set out below which hold:

(a) A lease containing no descriptions invalid.

Dingman vs. *Kelly* (1856) 7 Ind. 717, 718;

Wilson vs. *Johnson* (1895) 145 Ind. 41, 43, 44;

Edens vs. *Miller* (1896) 147 Ind. 208, 211.

(b) Descriptions contained in an instrument other than the contract of conveyance must be clearly referred to and identified by the contract

signed by the party sought to be charged to be binding on such party under the Indiana statute of frauds.

Pulse, et al. vs. *Miller, et al.* (1881) 81 Ind. 190, 191, 192;

Ridgway vs. *Ingram* (1875) 50 Ind. 145, 147, 148;

Wilstach vs. *Heyd, et al.* (1889) 122 Ind. 574, 578.

(c) Land descriptions such as "Pt of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres"; "Pt of W ½ of NW ¼ Sec 4 T 3 SR 13 W containing 1.00 acres" are insufficient identifications to demise the land. (R. 204-205.)

Craven, et al. vs. *Butterfield, et al.* (1881) 80 Ind. 503, 509;

First National Bank of Centreville vs. *Gough, et al.* (1878) 61 Ind. 147;

Thompson, et al. vs. *Griffith* (1922) 79 Ind. App. 60, 61.

(d) The material alterations of the descriptions made by McClurkin, are presumptively fraudulent as to grantor—petitioner, and respondent can maintain no affirmative defense thereon.

Robbins vs. *Magee, et al.* (1881) 76 Ind. 381, 392-394.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its dockets No. 7423, *Amanta S. Maier* vs. *The Continental Oil Company*, and that the decree of said United States Circuit Court of Appeals in said cause be reversed by this Court, and that the petitioner have such other and further relief in the premises as to this Court may seem just.

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